

AMENDMENTS TO SECTION II OF THE ANNEX
TO THE 1946 AGREEMENT

* Delete Section II of the Annex to the 1946 Agreement in its entirety and replace it with the following:

'SECTION II

Routes for the airlines of Australia:

The airlines of Australia designated under this Agreement shall, in accordance with the terms of their designations, be entitled to perform scheduled international air service on the following routes:

South Pacific Route:

1. From Australia via New Zealand, New Caledonia, Fiji, American Samoa,¹ Canton Island, French Polynesia, Mexico, Canada to the gateway points of Honolulu, San Francisco, Los Angeles, New York and three points to be selected by the Government of Australia and to an additional 8 points (which may be changed from time to time) in the United States only via one or more of the specified and/or selected gateway points and beyond to Canada, Mexico, the United Kingdom and Europe and beyond.

North Pacific Route:

2. From Australia via any two points in Asia (including Hong Kong, Japan, Korea, and Taipei and may be changed from time to time) to any three points in the United States to be chosen from Honolulu, Los Angeles, San Francisco, and New York and one other point selected by the Government of Australia.

Guam and the Commonwealth of the Northern Mariana Islands Route:

3. From Australia to Guam and the Commonwealth of the Northern Mariana Islands and beyond to any two points to be chosen from Tokyo, Nagoya, Fukuoka, Seoul, Taipei, Beijing and one additional point to be specified. The beyond points may be changed from time to time.

¹/ May be served as an intermediate or a turnaround point.'

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AMENDMENTS TO THE MEMORANDUM OF UNDERSTANDING
UNITED STATES-AUSTRALIA NORTH PACIFIC ROUTE 2 CAPACITY
(Annex B to the 1989 Capacity Agreement)

Paragraph 4

* Delete sub-paragraph (c) in its entirety and replace it with the following:

'(c) The growth entitlements for designated carriers of each Contracting Party under sub-paragraphs (a)(i), (a)(ii) and (a)(iii) of this paragraph will apply if:

(i) the airline seeking the increase in capacity has operated over the preceding 12 months at an average revenue passenger seat factor of 70% or more based on the total traffic onboard into/ex Australia; and

(ii) not less than 55% of passenger traffic carried over the preceding 12 months by the airline seeking the increase was Australia-USA v.v. uplift/discharge (origin/destination) traffic.'

Paragraph 6

* Delete paragraph 6 in its entirety and replace it with the following:

'6. (a) Notwithstanding any other provision of this Memorandum, each designated airline provided it has fully used its entitlements granted under other paragraphs of this Memorandum will be entitled to:

(i) operate a minimum of 3 round trip frequencies per week between the United States and Australia on route 2, without limitation as to aircraft type;²

(ii) subject to sub-paragraph (b), operate any level of capacity that had been operated by that airline on route 2 at any time within the most recent 18 months; except that an airline shall always have the right to restore service to its level of minimum entitlements, as set forth in sub-paragraph 6 (a)(i) above; and

(iii) operate a level of capacity necessary to reduce its average load factor to 70% on its regularly scheduled services on route 2 provided that an average of 55% or more of the revenue passenger traffic onboard is U.S.-Australia uplift/discharge (origin/destination) passenger traffic.

^{2/} Operating authorizations for the rights embodied in this sub-paragraph shall not contain conditions relating to traffic composition.

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(b) A designated airline may only increase its capacity to the level referred to in sub-paragraph 6 (a)(ii) if:

(i) the airline has operated over the preceding 12 months at an average revenue passenger seat factor of 70% or more based on the total traffic onboard into/ex Australia; and

(ii) not less than 55% of passenger traffic carried over the preceding 12 months by the airline was Australia-USA v.v. uplift/discharge (origin/destination) traffic.

(c) The operation of a level of capacity necessary to reduce an airline's load factor to 70% on its regularly scheduled services referred to in sub-paragraph (a)(iii) of this paragraph shall be calculated on the basis of statistics reported by that airline to its Government, with such statistics reflecting: (1) All revenue passenger traffic, irrespective of point of uplift/discharge (origin/destination) on route 2, and, (2) U.S.-Australia uplift/discharge (origin/destination) revenue passenger traffic carried into and from the territory of the other Contracting Party on route 2 during the most recent 12-month period for which statistics are available. Where the calculation of such capacity results in a residue of seats upon conversion into weekly frequencies, the airline may operate an additional weekly frequency provided such residue is 50 percent or more of the seat capacity of the aircraft to be operated.'

Paragraph 8

* Delete paragraph 8 in its entirety and replace it with the following:

'8. (a) Subject to sub-paragraph (b) of this paragraph, and provided that the 1946 Agreement remains in effect, this Memorandum (as amended from time to time) will remain in effect until 31 January 1997, and thereafter will remain in effect unless either Contracting Party notifies the other in writing of its intention to terminate this Memorandum on a date it specifies.

(b) At any time after 31 January 1997, either Party may request consultations which will be held within 60 days from the date of the request, to amend the Memorandum. Unless mutually arranged otherwise, if at the conclusion of such consultations, agreement cannot be reached on amendments proposed by either Party, this Memorandum will terminate one month from the date of conclusion of the consultations.

(c) The arrangements in sub-paragraph (b) of this paragraph will not preclude either Party from seeking amendments to this Memorandum before 31 January 1997.'

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AMENDMENTS TO THE UNDERSTANDINGS REACHED ON THE INTERPRETATION
OF THE MEMORANDA OF UNDERSTANDING CONCERNING CAPACITY
(Annex D to the 1989 Capacity Agreement)

Paragraph 18

* Insert the following new paragraph:

'18. Unless the Contracting Parties agree otherwise no more than two airline designations by each Contracting Party to operate combination services on North Pacific route 2 may be in effect at any one time.'

Paragraphs 3, 6, and 8

* Delete paragraphs 3, 6, and 8 in their entirety and replace them with the following:

'3. In calculating a load factor under sub-paragraphs 6 (a)(iii) and 6 (b) of the South Pacific Memorandum of Understanding and sub-paragraphs 4 (c)(i), 6 (a)(iii), 6 (b)(i) and 6 (c) of the North Pacific Memorandum of Understanding, services including extra capacity brought about by substituting larger for smaller aircraft will be treated as normal scheduled services irrespective of whether for other purposes the extra capacity is treated as supplementary services (extra sections).'

'6. Airlines must operate their capacity entitlements under the South Pacific and North Pacific Memoranda of Understanding within an 18-month period from the time the entitlement takes effect, or the unused portion will lapse. This provision in no way limits an airline's right to operate its capacity entitlements as set out in sub-paragraph 6 (a)(i) of the South Pacific and North Pacific Memoranda of Understanding.'

'8. A reference in sub-paragraph 6(a)(ii) of the South Pacific and North Pacific Memoranda of Understandings to any level of capacity that had been operated by a designated airline at any time within the most recent 18 months includes only capacity operated on scheduled services and does not include supplementary services operated by that airline. This provision in no way prevents an airline from operating supplementary services in accordance with sub-paragraphs 2 (c) of the South Pacific and North Pacific Memoranda of Understanding.'

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